

**Letter of Findings: 06-0275
Indiana Use Tax
For Year 2004**

NOTICE: Under IC § 4-22-7-7, this document is required for publication in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax: Imposition

Authority: *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999); [45 IAC 15-5-3\(b\)\(6\)](#); IC § 6-2.5-3-2(b); IC § 6-2.5-3-6(d); IC § 6-8.1-5-1(b).

Taxpayer protests the Department's assessment of use tax.

II. Use Tax: Exemption

Authority: *Indiana Dept. of Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003); *Black's Law Dictionary* 898 (7th ed. 1999).

Taxpayer protests the Department's denial of its use tax exemption.

STATEMENT OF FACTS

Taxpayer purchased an aircraft on September 21, 2004. The aircraft compliance division of the Indiana Department of Revenue ("Department") notified the taxpayer that its records indicated the taxpayer had not registered its aircraft with the State. The taxpayer responded to the notification and claimed it was exempt from use tax. After reviewing the information provided by the taxpayer, the aircraft compliance division concluded the taxpayer was liable for the use tax and issued a notice of proposed assessment. Taxpayer submitted a protest challenging the assessment. The Indiana Department of Revenue ("Department") scheduled a hearing for September 22, 2006. The taxpayer neither appeared for the hearing nor contacted the Hearing Officer to request a continuance. Therefore, the Department will base this Letter of Findings on the documentation provided in the file.

I. Use Tax: Imposition

DISCUSSION

Indiana law establishes a proposition stating a hearing officer, and by extension the state-level taxing authorities of which the hearing officers serve as agents "do not have the duty to make a taxpayer's case." *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999). "If a taxpayer or its representative fails to appear at a hearing without securing a continuance, the [D]epartment will decide the issues on the best information available to the [D]epartment." [45 IAC 15-5-3\(b\)\(6\)](#). Accordingly, the Department will decide the merits of the taxpayer's protest based on the applicable law and on information in the taxpayer's file.

The issue for consideration is whether the aircraft compliance division improperly assessed use tax on the taxpayer. IC § 6-2.5-3-2(b) imposes use tax "on the storage, use, or consumption of... an aircraft... if the... aircraft... is acquired in a transaction that is an isolated or occasional sale; and is required to be titled, licensed, or registered by this state for use in Indiana." Per IC § 6-2.5-3-6(d),

A person liable for use tax imposed in respect to a[n]... aircraft under [IC § 6-2.5-3-2(b)]... shall pay the tax... to the registering agency when the person registers the aircraft; unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the... aircraft or proof that the taxes are inapplicable because of an exemption....

A presumption exists that all tax assessments are accurate. IC § 6-8.1-5-1(b). The taxpayer bears the burden of proving that an assessment is incorrect. Id.

The taxpayer explains that it was not the owner of the aircraft. The taxpayer asserts a Delaware corporation owned the aircraft. To substantiate its assertion, the Taxpayer provided the aircraft compliance division with a Delaware Certificate of Incorporation. Therefore, the taxpayer argues it was improper for the Department to assess use tax against it since it was not the aircraft owner.

From the information provided within the file, which included an aircraft purchase agreement and a Federal Aviation Administration ("FAA") Registry inquiry, the information indicates the taxpayer was the purchaser and owner of the aircraft. This information rebuts the taxpayer's argument and verifies the aircraft compliance division's claim that the taxpayer was the party responsible for registering the aircraft with the state. Even though, the taxpayer provided the Department with a Delaware Certificate of Incorporation, this information does not prove the corporation owned the aircraft. The Certificate of Incorporation only indicates that a corporation filed for incorporation in the state of Delaware. Accordingly, the taxpayer failed to meet its burden that the Department was incorrect in assessing use tax and holding the taxpayer liable for the assessment.

FINDING

For the above-mentioned reasons, the Department denies the taxpayer's protest.

II. Use Tax: Exemption

DISCUSSION

The issue for consideration is whether the taxpayer established an entitlement to a use tax exemption. The burden of establishing entitlement to an exemption lies on the taxpayer claiming the exemption. *Indiana Dept. of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

From the available information, the taxpayer argues it was exempt from use tax on the ground that it uses the aircraft for renting and leasing purposes. To substantiate its claim, the taxpayer provided the aircraft compliance division with one lease agreement. However, the lease agreement was incomplete. The Department notes that the definition of a lease is "[a] contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration." *Black's Law Dictionary* 898 (7th ed. 1999). The lease provided by the taxpayer lacked a rental rate, a term of lease duration, and signatures executing the agreement. Thus, since the lease agreement lacked executing signatures and a consideration amount, there was no conveyance of a right to use in exchange for consideration, and accordingly no valid lease to establish a claim of renting and leasing.

In summation, the aircraft compliance division reviewed all relevant information and was correct to deny the taxpayer's claim of exemption from use tax. The taxpayer failed to establish sufficiently an entitlement to a use tax exemption.

FINDING

For the above-mentioned reasons, the Department denies the taxpayer's protest.

Posted: 02/28/2007 by Legislative Services Agency

An [html](#) version of this document.